

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 506 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURESH H RAJPUT

Versus

BHAILALBHAI THAKORE

Appearance:

MR PRANAV G DESAI for Appellant (Absent)
NOTICE SERVED for Respondents No. 1 & 2
Mr. D.N. Patel, Addl. Public Prosecutor for
Respondent No. 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 21/08/98

ORAL JUDGEMENT

Original Complainant, Food Inspector of Vadodara Municipal Corporation, being aggrieved by an order of acquittal recorded on 1.3.1989 by Judicial Magistrate First Class, Vadodara in favour of the respondents No. 1 and 2 in Criminal Case No. 8141 of 1986 has preferred this appeal. The respondents were tried for an offence

punishable under section 7(1) read with section 16 (1)(a) of the Prevention of Food Adulteration Act.

2. Learned Additional Public Prosecutor, Mr. D.N. Patel, who is appearing in this matter, has taken me through the entire record. From the record, it transpires that on the allegation that the respondent No.1 [hereinafter referred as the original accused No.1] came to be prosecuted by the complainant as the owner of Manohar Kariyana Stores and was dealing in grocery and miscellaneous articles. Respondent No.2 (hereinafter referred to as the original accused No.2) was present in the said Store when the sample was taken, i.e. 13.8.1986. Food Inspector called a panch and in the presence of the panch, he collected the sample of Mustard Oil in accordance with the Prevention of Food Adulteration Rules (hereinafter referred to as the Rules) from the accused No.2. One sample was forwarded to the Public Analyst for analysis on 29th August 1986, and on examination of the same the Public Analyst opined that the sample does not conform to the provisions contained in the Act and the Rules. From the record it appears that the B.R. Reading at 400C was 61.5 as against the prescribed standard of 58.0 to 60.5. Bellier's Test (TT) also indicated that the sample was not in accordance with the standard. On receipt of the report, it transpires that after obtaining consent, prosecution came to be launched against the present accused No.1 and 2. On appreciation of evidence, the trial Court acquitted the accused. Being aggrieved by the aforesaid order, the Food Inspector has preferred this appeal.

3. Mr. Patel, learned Additional Public Prosecutor was not in a position to point out any positive evidence indicating that the original accused No.1 was the owner of the shop. The Food Inspector was specifically put question whether he has seen the licence or not, and he has stated that he has seen the licensee but he has not seized the same. It is difficult to understand that if the prosecution case is challenged on the ground that the accused No.1 is not the owner of the shop, why the prosecution has failed to produce satisfactory evidence? In the instant case, this has relevance because at the relevant time when the sample was collected, accused No.1 was not present at the shop. Accused No.1, in his statement, has specifically stated that he is not the owner of the shop. Except the bare words of the complainant, in the instant case, there is nothing to indicate as to how the accused No.1 is responsible.

4. Surprisingly, in the instant case, there is

denial of right conferred upon the accused No.2 by the Parliament. Section 13 (2) of the Act, which is mandatory, has been observed in breach in the instant case insofar as accused No.2 is concerned. Though accused No.1 was not present, copy of the analysis report was forwarded at the address of accused No.1 by Registered Post. So far as accused No.2 is concerned, the complainant has admitted in his evidence that no separate envelope was forwarded to accused No.2. From the evidence it transpires that only copy of the letter is forwarded with the letter which was addressed to accused No.1. Before the Court, he has stated that accused No.2 was the seller and the office copy was forwarded, vide Exh. 31. There is nothing to show that the report of the Public Analyst was forwarded to him. Mr. Patel, learned APP, after going through the record, was not in a position to point out as to how the Court has committed error in coming to this conclusion. If that be so, it is difficult to say that the order passed by the trial Court is perverse or that the view taken by the trial Court could not have been taken on the evidence on record. I am, therefore, in agreement with the views and the findings arrived at by the Court below. I am, therefore, not discussing the evidence of each witness in detail in view of the observations made by the Honourable Supreme Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417, which reads as under:-

" This Court has observed in *Girija Nandini Devi v. Bigendra Nandini Choudry* (1967) 1 SCR 93 : (AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice"

5. Moreover, this is an appeal against the order of acquittal, The Court has carefully gone through the evidence which was suggested to be read by learned Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such

matters as (1). the view of the trial judge as to the credibility of the witnesses; (2). the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3). the right of the accused to the benefit of any doubt, and, (4). the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses (See AIR 1934 PC 227).

6. In the result, this appeal fails, and is hereby dismissed.

csm./ -----